Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Income Tax Appeal No.17 of 2004

Commissioner of Income Tax,
Dehradun.

..... Appellant.

Versus

Graphic Era Education Society,
Capri Trade Centre, Dehradun.

..... Respondent.

Date: Feb. 22,2006.

Hon'ble P.C.Verma,J.
Hon'ble B.C.Kandpal,J.

This appeal has been filed against the order dated 15.12.2003 passed by the Income Tax Appellate Tribunal, Delhi Bench A, New Delhi in Income Tax Appeal No.614/Del/2003, Graphic Era Education Society versus Commissioner of Income Tax, Dehradun, whereby the Income Tax Appellate Tribunal **(hereinafter referred to as the ITAT)** has held that the Commissioner of Income Tax **(hereinafter referred to as the CIT)** should not have withdrawn the registration granted to the assessee under Section 12 AA of the Income Tax Act, 1961 and quashed the impugned order.

2. Brief facts of the case giving rise to the present appeal are that the respondent - Graphic Era Education Society, is a society registered with the Registrar, Firm, Society, and Chits, Uttar Pradesh Garhwal Region, Dehradun. The Society was also registered by the Commissioner of Income Tax, Meerut under Sec. 12A of

the Income Tax Act, 1961, vide order dated 31.5.1999 in F No. 125/DDN/98-99. The Society is running a computer education institute and has been claiming exemption from Income Tax under Section 11 of the Income Tax Act, 1961. A survey was conducted by the revenue under Sec. 133A in the case of the Society in which it was found that the Society's claim for exemption under Section 11 was not justified. Therefore, a notice was issued by the Commissioner of Income Tax, Dehradun to the Society on 19.3.2002 to show cause as to why registration granted may not be withdrawn because the Society does not appear to be running for a charitable purpose but solely for generating profit and so it does not fulfil the conditions laid down for registration under Section 12 AA as there was no element of benevolence of subsidy in imparting of education. The Society opposed the proposed withdrawal of registration of the Society on the ground that the CIT is not empowered to withdraw its registration and that the Society has been formed for charitable purpose as defined under Section 2 (15) of the Income Tax Act, 1961. The CIT after perusal of the reply filed by the assessee and after hearing the arguments came to the conclusion that the powers to issue an order for registration under Section 12 AA of the Income Tax Act, 1961, which is a Central Act, includes the power to rescind the order and rescinded and withdrawn the registration order dated 31.5.1999.

3. Feeling aggrieved by the said order passed by CIT, the Society/appellant (respondent herein) filed the appeal before the ITAT. The ITAT, in appeal, vide impugned order dated 15.12.2003 considering the facts

of the case as also the legal position held that the CIT should not have withdrawn the registration granted to the assessee under Sec. 12 AA of the Income Tax Act, 1961 and quashed the order of the CIT the ITAT has also held that the order in the present appeal would not be decisive of the question whether the assessee is entitled to exemption under Section 11 and 12 of the Income Tax Act, 1961 and allowed the appeal partly. Feeling aggrieved, the revenue has come up in this appeal raising the following substantial questions of law:-

A. Whether on facts and in the circumstances of the case, the Tribunal was legally justified in holding that the CIT should not have withdrawn the registration granted to the assessee under Section 12AA of the I.T.Act, 1961 and to quash the order passed by the CIT?

B. Whether under the facts and circumstances, the respondent are entitled for registration under Section 12AA when their object of charitable purpose has been submerged by profit motive, generating positive income?

C. Whether the power to grant registration, includes the power to cancel registration under the law, facts and circumstances?

4. We have heard Sri Pitamber Maulekhi, learned counsel for the appellant. It is pointed out by him that the controversy raised in the appeal has already been decided by a Division Bench of this Court consisting of Hon'ble the Chief Justice and Hon'ble Rajesh Tandon, J. in **Writ Petition No. 235 of 2002 (M/B), Welham Boy's School Society versus Central Board of Direct Taxes, New Delhi and another on 19.10.2005.** He submitted that the appeal in hand may be decided with the same

terms as in the aforesaid writ petition. We have gone through the aforesaid judgment. The question raised in the aforesaid writ petition is similar. For the sake of convenience Para 8 of the said judgment of the Division Bench is reproduce as under:-

> "The first and the basic question that arises for consideration is whether the petitioner is right in contending that the second respondent Commissioner of Income Tax had no power and jurisdiction to withdraw the registration grated under Section 12AA of the Act. If that question is decided in favour of the petitioner, it will be unnecessary to consider the other contentions raised by the petitioner. Hence we shall proceed to consider to contention regarding the power and jurisdiction of the second respondent to withdraw the registration."

5. In Paragraphs 14 & 15 of the said judgment the Division Bench has held as under:-

> "**14.** In the light of the discussion above, we hold that Annexure 6 order was passed by the second respondent without power and jurisdiction and therefore, it is liable to be quashed. Accordingly, Annexure 6 order dated 08.05.2002 passed by the second respondent withdrawing / rescinding the order granting registration to the petitioner society under Section 12 AA of the Income Tax Act, 1961, is quashed. Consequently, the registration granted to the petitioner society under

Section 12 AA of the Income Tax, 1961 stands restored.

15. In view of the quashing of the impugned order on the ground of lack of power and jurisdiction, we find it unnecessary to consider the other contentions raised by the petitioner for challenging the impugned order."

6. In view of the decision of Division Bench in the aforesaid writ petition, the question raised in this appeal stands answered in favour of the assessee. Hence the appeal is dismissed. No order as to costs.

(B.C.Kandpal,J,) **(P.C.Verma,J.)**
22.02.2006 **22.02.2006**

P.Singh